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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re HEP Grocery Company, L.P.

Serial No. 75/906,043

Kirt S. O'Neill of Aikin, Gump, Strauss, Hauer & Feld.

Ingrid C. Eulin, Trademark Examining Attorney, Law Office
111.

Before Simms, Hanak and Quinn, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

HEP Grocery Company, L.P. (applicant) seeks to
register is typed drawing form GREAT CATCH for "frozen
prepared seafood." The intent-to-use application was filed
on January 28, 2000.

Citing Section 2(d) of the Trademark Act, the
Examining Attorney has refused registration on the basis
that applicant's mark, as applied to frozen prepared sea
food, is likely to cause confusion with the mark FISHER BOY
A GREAT CATCH and design in the form shown below previously
registered for "frozen fish and seafood." Registration No.
2,317,273 issued February 8, 2000.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

It is fundamental that "the basic principle in determining confusion between marks is that marks must be compared in their entireties and must be considered in connection with the particular goods or services for which they are used." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 750 (Fed. Cir. 1985).

In this case, applicant's goods (frozen prepared sea food) and registrant's goods (frozen fish and seafood) are essentially legally identical.

Considering next the marks, we note at the outset that when the goods are legally identical, as is the case here, "the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines."

Century 21 Real Estate Corp. v. Century Life of America,
970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Nevertheless, having said the foregoing we find that applicant's mark and registrant's mark are so different in terms of visual appearance, pronunciation and connotation such that there is no likelihood of confusion when they are used on legally identical goods. Being quite blunt, the words "great catch" in the registered mark are depicted in a very subordinate fashion. Thus, in terms of visual appearance the two marks are quite different. Moreover, in terms of pronunciation we believe that most consumers would pronounce registrant's mark as FISHER BOY and would not bother to add the extra verbiage A GREAT CATCH. Finally, in terms of connotation, registrant's mark with the prominent words FISHER BOY and the design of a young boy with a fishing pole clearly conjures up a "fisher boy," and does not conjure up a "great catch."

Applicant has properly made of record over 20 third-party registrations for various seafood products whose marks contain the word CATCH. In an Office Action dated March 5, 2002, the Examining Attorney at page 2 commented upon these third-party registrations and stated that "the word 'catch' is descriptive as applied to seafood and fish because they refer to items that have been caught." We

also take judicial notice of the dictionary definition of the word "catch" which is as follows: "something caught, as a quantity of fish." Random House Webster's Dictionary (2001). Ironically, in the first Office Action dated June 29, 2001 the Examining Attorney at page 2 stated that "GREAT is a laudatory term which is descriptive of a feature of the applicant's goods," and must be disclaimed. Thereafter, applicant submitted a disclaimer of the word GREAT.

As a result of the foregoing, the Examining Attorney has characterized the only two words common to applicant's mark and registrant's mark (GREAT CATCH) as being merely descriptive of seafood products.

Thus, in giving very little weight to the GREAT CATCH portion of registrant's mark because it is depicted in such a subordinate fashion, we also would give less weight to this portion because, according to the Examining Attorney, it "is descriptive ... with respect to the involved goods." National Data, 224 USPQ at 751.

Decision: The refusal to register is reversed.